IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8603 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KANUBHA GULABSINH PARMAR

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 8603 of 2003

MR BM MANGUKIYA for Petitioner No. 1-2

MS MITA PANCHAL, AGP for Respondent No. 1,2

MR SK PATEL for Respondent No. 3

CORAM : MR.JUSTICE K.A.PUJ

Date of decision: 03/07/2003

ORAL JUDGEMENT

The present petition is filed by the petitioners under Article 226 of the Constitution of India challenging the legality, validity and propriety of the order passed by the City Deputy Collector and Election Authority of Gujarat State Cooperative Marketing Federation Ltd (GUJKOMASOL), the respondent No.2 herein on 23rd June 2003 whereby the nomination of the petitioner No.1 for election of the GUJKOMASOL is

rejected on the ground that the petitioner is convicted under sub-clause (b) of clause (1) of Section 145F of the Gujarat Cooperative Societies Act, 1961 ("Act" for short) by the Development Commissioner and thereby the petitioner No.1 is disqualified to contest the election of GUJKOMASOL.

2. It is the case of petitioner that the petitioner No.1 is not even charged for the offence punishable under Section 153-A or Section 171-E or sub-section (2) or sub-section (3) of Section 505 of Indian Penal Code or Section 145-R or Section 145-S of the Act and hence the question of conviction of the petitioner No.1 under the said Section does not arise. It is further stated that the Development Commissioner is not the authority to convict any person of the criminal offence. It is the say of the petitioners that petitioner No.1 is falsely implicated for the offence punishable under Section 188 and Section 430 of IPC and on the said allegations, the petitioner has been placed under suspension by the Development Commissioner in purported exercise of the powers under Section 71 of the Gujarat Panchayats Act, 1973. It is further stated that the said suspension order is not vogue inasmuch as the writ petition preferred against the order of suspension has been admitted by the learned Single Judge and the order of suspension has been stayed. It is further stated that the said order has been challenged by the State by way of preferring an appeal and since the order of learned Single Judge was stayed, the petitioner No.1 preferred the application for vacating the stay under Article 226 (3) of the Constitution of India and therefore ad-interim order granted by the Division Bench of this Court in LPA, was required to be heard within 15 days, but no action has been taken by the State for hearing of the appeal and therefore the order passed by the Division Bench is not in operation.

3. It is further stated that the petitioner No.1 has also challenged the filing of the FIR before this Court, wherein, initially this Court has restrained the Investigating Officer to investigate the said offence, but the said offence was modified and the Investigating Officer permitted to investigate the said offence. This Court, thereafter, permitted the Investigating Officer to file the chargesheet and the petitioner No.1 was relegated to file an application for discharge before the learned Magistrate. The application for discharge was dismissed by the learned Magistrate and thereafter the petitioner No.1 preferred the revision application before the Sessions Court, which was also dismissed and being

aggrieved by the said order the petitioner No.1 preferred the quashing petition before this Court which was also dismissed. The petitioner thereafter approached the Hon'ble Supreme Court by way of preferring the Special Leave Petition wherein the notice is issued by the Hon'ble Supreme Court and the matter is pending before the Hon'ble Supreme Court.

4. It is in the above background of the matter, the impugned order is challenged by the petitioners in this petition by invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India.

5. This Court has issued the notice on 26.6.2003 making it returnable on 30th June 2003. On service of the notice, the respondents have appeared through their Advocate. An affidavit-in-reply was filed on behalf of respondent No.2 and an affidavit-in-reply was also filed on behalf of respondent No.3. The petitioner is represented by learned advocate Mr. BM Mangukia, respondents No. 1 and 2 are represented by learned AGP Ms. Mita Panchal, and respondent No.3 is represented by learned advocate Mr. SK Patel. Despite service of notice, nobody appears on behalf of respondent No.4.

6. Mr. Mangukia, learned advocate appearing for the petitioners submits that the respondent No.2 has issued the notification dated 11th June 2003 for election of GUJKOMASOL. As per the said election programme, the nomination forms were accepted till 3.00 p.m. on 21st June 2003, scrutiny thereof was taken place on 23rd June 2003 and at that time the petitioner No.1 was present before the Deputy Collector. At the time of scrutiny of nominations, the respondent No.3 raised objections that the petitioner No.1 is a defaulter since petitioner No.2 society did not pay about Rs. 15 lakhs as on March 31, 2003 and, therefore, petitioner No.1 cannot contest the election. It was further stated by the respondent No.3 that since the petitioner No.1 was involved in commission of the criminal offence and petitioner No.1 was suspended by an order passed by the Development Commissioner, the nomination of the petitioner No.1 was required to be rejected. The petitioner No.1 has given reply to both the objections. However, without taking into consideration the said objections, the nomination of the petitioner No.1 was rejected by the respondent No.2 by an order dated 23rd June 2003. Mr. Mangukia has further submitted that the said order is ex facie illegal, arbitrary,ultra vires and patently malafide. He has further submitted that the objections raised by the

respondent No.3 are not sustainable and the petitioner No.1's nomination could not have been rejected on the said ground. He has further submitted that the petitioner has not acquired any disqualification as contemplated under Section 145-F of the Act. He has also submitted that since the petitioner No.1 has not acquired any disqualification, he could not have been restrained from contesting the election. He has further submitted that the right to contest the election is the statutory right and it cannot be taken away without following statutory provisions. Mr. Mangukia has further submitted that the impugned order passed by the respondent No.2 is absolutely perverse and malafide and the respondent No.2 has acted at the behest of the respondent No.4 who is the Minister of State for Home in the State Government and he has influenced the respondent No.2 while passing the said order. He has also submitted that since the petitioner's case neither falls under Section 145F nor under 145J of the Act, the order passed by the respondent No.2 rejecting his nomination is absolutely illegal, ultra vires, null and void, and deserves to be quashed and set aside.

7. Mr. Mangukia has also filed detailed Written Submissions, wherein he has reiterated all his contentions and further contended that, the Dy. Collector has undertaken an exercise in rejecting nominations of the petitioner of rewriting the section 145F of the Act. From reading of the order impugned in this petition, it is not clear whether the Dy. Collector has rejected the nominations under clause (a) or clause (d) of sub-section 1 of Section 145F of the Act. The clause (b) of sub-section 1 of section 145F of the Act provides conviction for the offences punishable under section 153A or 171F or sub section 2 of section 505 of the Indian Penal Code. The section 153A of the Indian Penal Code speaks for the punishment if the person is charged for promoting enmity between groups on the ground of the religion, race, place of birth, resident, languages or doing act prejudicial to the maintenance of the harmony. The section 171F provides for the punishment if the person is charged for unduly influence or personate act to the election. Sub section 2 and 5 of section 505 provides for punishment in case the person makes, publicize or circulates any statement, rumor or report to cause mutiny or fail them in their duties or commits any act to induce the public to commit offence against the State or harm tranquility or entice to act any community to commit any offence against any other community or who makes, publish or circulate any statement or report containing rumor or alarming news

that is intended to create/promote on the ground of religion, race, place of birth, resident, cast or community of feeling of enmity, hatred or ill-will amongst them. It is not the case that the petitioner is even charged or any criminal prosecution has been launched against the petitioner for any of such offences. In the body of the order, it has been stated and in course of arguments, it has also been added by the other side that the nomination of the petitioner is not rejected under section 145F-1(b) but under section 145F(1)(d).

8. It is further contended that, the arguments being advanced by the other side and what is sought to be conveyed by the respondents by expressing himself in the order impugned that the petitioner is facing the criminal prosecution for the offences punishable under section 188 and 403 of IP Code and in pursuance of the said launching of criminal prosecution, the petitioner is suspended by the Development Commissioner in exercise of powers conferred upon him under sub-section 1 of section 87 of the Gujarat Panchayats Act, 1933. The said suspension of the petitioner is being sought to be substituted by the respondent as either holding guilty of a corrupt practice under the chapter 11-A by the State Government. Therefore, the respondent Dy. Collector is reading the provision of section 145F(1)(d) as follows :-

> "If he is found guilty of corrupt practice under this chapter, is sought to be substituted if he has been suspended by the Development Commissioner under the provisions of Panchayat Act."

9. It is further contended that, this is nothing but rewriting of a statutory provisions. It may be noted that the word suspension is not synonymous of word holding guilty. The suspension is also not synonymous of term conviction. There is no ambiguity in the provisions of section 145F of the Act. There is no cautious emisos which call upon this Court to fill up gaps for giving harmonious constructions. Even cautious emisos while interpreting constructing and expanding the statutory provisions, does not permit the courts to re-legislate. Therefore, in section 145F 1 (d) it cannot be read that the petitioner on account of having been suspended for launching of criminal prosecution, acquires disqualification since suspension can be said to be also found guilty of corrupt practices under the provisions of the chapter 11-A.

10. In support of his submissions, Mr. Mangukia has relied on the decision of Hon'ble Supreme Court in the case of S.R. Bommai Vs. Union of India & Others (1994) 3 SCC 1, wherein the Hon'ble Supreme Court has held that "when the Act is alleged to be malafide and there is no reason except which occasion to exercise the said powers, the said Act should be considered to be ex facie arbitrary and malafide. In those circumstances, the Court has to interject itself, otherwise, it would result into failure and/or miscarriage of justice."

11. Mr. Mangukia has further relied on the decision of the Hon'ble Supreme Court in the case of Election Commission of India Vs. Ashok Kumar and Others - (2000) 8 SCC 216, wherein the Hon'ble Supreme Court, while laying down certain cardinal principles of election, has held that "without interrupting, obstructing or dealing the progress of the election proceedings, judicial intervention is available if assistance of the Court has been sought for merely to correct or smoothen the progress of election proceedings, to remove the obstacles therein or to preserve a vital piece of evidence if the same would be lost or destroyed or rendered irretrievable by the time the results are declared and stage is set for invoking the jurisdiction of the court. Mr. Mangukia has further relied on the decision of this Court in the case of Bhikhabhai Keshavlal Patel v. Election Officer, Dist. Central Co-op. Bank Ltd. Mehsana & Others (2002) 33 (1) GLR 552, wherein, after considering the relevant statutory provisions and the authorities on the subject, this Court, (Coram: K.M. Mehta, J.) has taken the view that :

"The illegality is so apparent on the face of the record that rejecting the petition at this stage and requiring the petitioner-Society to file an election petition after the elections are over, would not only be a travesty of justice but also frustrate the letter and spirit of the democratic process. The very object of the self-imposed rule that the Courts shall not interfere with the election process when the election process has commenced is to ensure that the election process goes on. When the Returning Officer himself commits a patent illegality and rejects the nomination paper of the petitioner contrary to the statutory provisions or in any view of the matter condition precedent for exercising the power is lacking, then the same done without any power or jurisdiction. In the Court's view the condition precedent for exercising the power

under the provisions of the Act and Rules are lacking, and therefore, there is inherent lacking of jurisdiction in the order of respondent No.1. This must be held to be one of the exceptional and extraordinary circumstances justifying the interference of this Court with the impugned decision of the Returning Officer."

12. On the basis of the aforesaid facts as well as statutory provisions and the binding decisions of the Hon'ble Supreme Court as well as this Court, Mr. Mangukia has submitted that the order passed by the respondent rejecting the petitioner No.1's nomination from contesting the election is required to be quashed and set aside.

13. Ms. Mita Panchal, the learned Assistant Government Pleader appearing for respondents No. 1 and 2, submitted that the nomination of the petitioner No.1 was rejected as per the provisions of the Act and it is in accordance with law. She has further submitted that the allegations which were levelled against the respondent No.2 are absolutely false, frivolous and baseless. The respondent No.2 has acted independently without anybody's pressure or interference as alleged by the petitioners. She has further submitted that the respondent No.2 has specifically denied in his affidavit-in-reply that he has conveyed to the petitioner No.1 that the election process was over and he was the final authority and that the High Court would not interfere with the order passed by him. She has further submitted that the respondent No.2 has acted independently without anybody's interference, as per the rules and regulations and as per the provisions of the Act. She has further submitted that the present petition under Article 226 of the Constitution of India is not maintainable and an alternative efficacious remedy is provided under the Act, whereby the petitioners can challenge the election by way of filing election petition before the Election Tribunal after the election is over. She has further submitted that it is by now a settled position in law that once the election process is started, this Court should not interfere in the election process and allow the election to be completed. Any interference at this stage would delay the election process and it will amount to interrupting, obstructing or delaying the process of the election proceedings as observed by the Hon'ble Supreme Court in the case of Election Commission of India vs. Ashok Kumar and Others (Supra).

14. As far as alternative remedy is concerned, Ms. Mita Panchal has relied on the decision of this Court in the case of Bhilalbhai Ukabhai Borad & Ors. vs. Election Officer and The Dy. Collector of Amreli & Ors. - 1997 (3) GCD 789 (Guj.), wherein it is held as under;

> "Under Sec. 145 U of the said Act it is provided that notwithstanding anything contained in Sec. 96 or any other provisions of the Gujarat Co-operative Societies Act, any dispute relating to election shall be referred to the Tribunal. The grounds on which the Tribunal can declare election to be void are narrated in Rule 82 of the Co-operative Societies Election to Committee Rule 1982 and improper rejection of nomination papers is a ground enumerated in Clause (c) of Rule 82. Even non-compliance with the provisions of the Act or Rules made thereunder is a ground under Clause (d) (iv) for declaring the election of the return candidate to be void when the result of the election, in so far as it concerns such returned candidate, has been materially affected. It is therefore clear that the nature of controversy which is sought to be raised in this petition on the basis of improper rejection of nomination papers squarely falls within Rule 82 of the said Election Rules and it would be for the Tribunal to decide such disputes under Sec. 145-U of the said Act."

Ms. Panchal has further relied on the decision of the Hon'ble Supreme Court in the case of Umesh Shivappa Ambi And Others vs. Angadi Shekara Basappa And Others - (1998) 4 SCC 529, wherein it is held as under :

> "Once an election is over, the aggrieved candidate will have to pursue his remedy in accordance with the provisions of law and the High Court will not ordinarily interfere with the elections under Article 226. The High Court will not ordinarily interfere where there is an appropriate or equally efficacious remedy available, particularly in relation to election disputes. In the present case, under Section 70(2)(C) of the Karnataka Cooperative Societies Act, 1959 any dispute arising in connection with the election of a President, Vice-President, Chairman, Vice-Chairman, Secretary, Treasurer or member of Committee of the Society has to be referred to the Registrar by raising a dispute

before him. The Registrar is required to decide this in accordance with law. This was, therefore, not a fit case for intervention under Article 226."

Ms. Panchal has also relied on the decision of the Hon'ble Supreme Court in the case of Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha And Another vs. State of Maharashtra and Others (2001) 8 SCC 509, wherein it is held as under :

"In view of the finding that preparation of the electoral roll being an intermediate stage in the process of election of the Managing Committee of a specified society and the election process having been set in motion, the High Court should not stay the continuation of the election process even though there may be some alleged illegality or breach of rules while preparing the electroral roll. It is not disputed that the election in question has already been held that the result thereof has been stayed by an order of the Supreme Court, and once the result of the election is declared, it would be open to the appellants to challenge the election of the returned candidate, if aggrieved, by means of an election petition before the Election Tribunal."

15. Ms. Panchal has lastly relied on the decision of this Court in the case of Gandhidham Mercantile Co-op. Bank Ltd. vs. Narsinhbhai Atmaram Agrawal - 43 (2) GLR 1060, wherein, after considering the Judgment of the Hon'ble Supreme Court in the case of Election Commission of India vs. Ashok Kumar (Supra), it is held that interference by the Tribunal in the midst of election process was in clear disregard of the settled principles. The Tribunal's sitting in appeal over the decision of the Election Officer was absolutely uncalled for. Hence, this Court is required to exercise its jurisdiction under Article 227 of the Constitution for setting aside the judgment and order of the Tribunal.

16. In view of the above submissions and authoities relied upon by Ms. Mita Panchal, it is emphatically urged by her that this Court should not interfere with the order passed by the Election Officer and the election process should be allowed to be completed within the scheduled programme.

17. Mr. SK Patel, learned advocate appearing for the respondent No.3 submitted that the petition filed by the petitioner is not maintainable as it is a petition against an order of rejection of nomination and rejection of nomination is an election dispute and in view of the specific statutory provision contained in Section 145(U) of the Act, the dispute can be adjudicated by way of election petition. Mr. Patel has denied the allegations made against the respondent No.3 in the petition. He has further submitted that the Election Officer has specifically observed in his order that with regard to the suspension of the petitioner No.1, nothing was pointed out by him and now for the first time before this Court the petitioner No.1 is raising several disputed questions which is not permissible. He has further submitted that Rule 82 of the Election to Specified Cooperative Societies Rules, specifically provides grounds for declaring election to be void and improper rejection of nomination is a specifies ground even under Rule 82 (c) and therefore, when a specific remedy is provided for adjudicating the election dispute under Section 145(U) of the Act, the whole dispute can well be examined and adjudicated by the Election Tribunal only. He has further submitted that when the petitioner is found involved in a serious crime and is found guilty in the act of moral turpitude and was also involved in the bogus lease and IOC Petrol Pump scam, it cannot be said that the petitioner is having blotless career which requires special treatment and discretionary exercise of power in his favour. He has further submitted that the language of Section 145F(1)(d) specifically contains the provision, "found guilty by the State", which has a very wide connotation which requires detailed argument and adjudication which can be done only in the election petition and not in the present petition and on this ground also no relief can be granted to the petitioner. Mr. Patel has further submitted that the petitioner has alleged malafide against the respondents in the petition and to establish mala fide the factual inquiry is essential and for making such factual inquiry recording of evidence and consideration of other relevant materials etc., are required. This cannot be looked into while entertaining the writ petition under Article 226 of the Constitution of India. Mr. Patel has further relied on the authorities cited by the learned AGP Ms. Mita Panchal and submitted that the petition should be summarily dismissed with costs.

18. I have heard the learned advocates appearing for the respective parties at great length at the admission stage itself and I have also perused the contents of the

petition and affidavit-in-reply filed by the respondents. I have also gone through the Written Submissions filed by Mr. Mangukia, the learned advocate appearing for the petitioners and have further given my anxious thoughts to the submissions made and contentions raised by him. Before appreciating the point at issue in its true perspective, it is necessary to have a look at the relevant provisions contained in the Act as well as in the Rules dealing with the issue involved in the present petition. The respondent No.2, i.e., Election Officer has rejected the nomination of the petitioner on the ground that the petitioner is disqualified under Section 145F(1)(d) of the Gujarat Cooperative Societies Act, 1961. The petitioner has filed the present petition on the footing that he is disqualified by the Election Officer by virtue of the provisions contained in Section 145-F(1)(b) of the Act and no averments are made in the petition in respect of sub-clause (d) of Clause (1) of Section 145-F of the Act. Section 145-F deals with disqualification for membership. It reads as under :

"145F. Disqualification for membership.___

(1) A person shall be disqualified for being elected, as, and for being a member of the committee of any specified society___

(a) if he is a salaried employee of any society (other than a society of employees themselves) or holds any office of profit under any society, except when he holds or is appointed to the office of a Managing Director or any other office under the society declared by the State Government by general or special order not to disqualify its holder;

(b) if he has been convicted of an offence punishable under section 153A of section 171F or sub-section (2) or sub-section (3) of Section 505 of the Indian Penal Code, (XLV of 1860) or under Section 145R or clause(a) of sub-section (2) of section 145S of this Act, unless a period of six years has elapsed since the date of his conviction;

(c) if he has been convicted by a Court in India for any offence and sentenced to imprisonment for not less than two years,

unless a period of five years has elapsed since his release;

(d) if he is found guilty of a corrupt practice under this Chapter by the State Government unless a period of six years has elapsed since the date on which the decision of the State Government takes effect;

(e) if he is also disqualified by or under any other provision of this Act."

The Election Officer has held that the petitioner No.1 is disqualified under Section 145-F(1)(d) of the Act as he was found guilty by the Development Officer who has passed the order on 11.7.2002 suspending him on the ground of moral turpitude. The Election Officer has also referred to the criminal complaints filed against the petitioner No.1 and considering these aspects, he has held that the petitioner No.1 is disqualified from contesting the election as a Director of the Society.

19. Section 145-F(1)(d) refers to a person who is found guilty of a corrupt practice under this chapter. The words "corrupt practice" is also defined under Section 145-J of the Act. Whether a person is found guilty of a corrupt practice can be decided only by leading necessary evidence in the matter. The issue can be looked into threadbare during the course of hearing of election petition.

20. The provision regarding disputes relating to elections are contained in Section 145-U of the Act, which runs as under :

"145U. Disputes relating to elections to be submitted to the Tribunal____

(1) Notwithstanding anything contained in section 96 or any other provisions of this Act, any dispute relating to an election shall be referred to the Tribunal;

(2) Such reference may be made by an aggrieved party by presenting an election petition to the Tribunal;

Provided that no such petition shall be made till after the final result of the election is declared and where any such petition is made it shall not be admitted by the Tribunal unless it is made within two months from the date of such declaration :

Provided further that, the Tribunal may admit any petition after the expiry of that period, if the petitioner satisfies the Tribunal that he had sufficient cause for not preferring the petition within the said period."

21. Sub-Section 1 of Section 145U of the Act specifically provides that any dispute relating to an election shall be refered to the Tribunal. Sub-section (2) further makes it clear that any aggrieved party can file an election petition to the Tribunal. The First Proviso to this Section, however, puts an embargo that no such petition shall be presented till the election is over. It is settled proposition in law that as soon as election programme is declared, the election process sets in motion and any dispute arises during the period from declaration of election programme till the declaration of election result, is considered to be an election dispute.

22. The GUJKOMASOL, being a Specified Cooperative Society, Rules, namely Gujarat Specified Cooperative Societies Election to Committees Rules, 1982, are applicable, and Rule 82 of the said Rules deals with grounds for declaring election to be void. Sub-rule (c) of Rule 82 specifically deals with the aspect that if the Government is of the opinion that if any nomination paper has been improperly rejected, the Government shall declare the election of the returned candidate to be void. Here, the powers to deal with the election disputes are given to the Tribunal and hence the Tribunal will decide as to whether any nomination paper has been improperly rejected or not and if it is held that the nomination has been improperly rejected, the Tribunal shall declare the election of the returned candidate to be void.

23. In view of the above statutory provision, this Court is of the view that a complete procedure is prescribed under the Act as well as under the Rules to deal with the election disputes. Election process starts as soon as the election programme is declared and that process is culminated into the result of election. There are several grounds for disqualification for membership, and if the nomination is rejected on any of the grounds mentioned in Section 145-F of the Act, the same would

squarely fall within the ambit of Rule 82(c) of the Rules. Whether any particular nomination form has been improperly rejected or not, that would require investigation of facts and leading of evidence, which can only be done during the course of election petition. Mr. Mangukia's arguments, that neither Section 145F nor Section 145J of the Act is applicable to the facts of the case, and there is no ground at all for disqualifying the petitioner No.1 and for rejecting the petitioner No.1's nomination form as the petitioner has not acquired any of the disqualifications which are mentioned in Section 145F of the Act, and the invocation of these provisions against the petitioners is absolutely unjust and improper and on that ground alone the respondent No.2's order deserves to be quashed and set aside, do not much weigh with this Court as this Court does not like to enter into the arena of merits at this stage, especially when a separate machinery is provided for redressal of grievance which is raised in the present petition. This Court is therefore not inclined to interfere in the election process which is already started.

24. This Court is of the view that the candidates' credentials should be beyond any clouds and when such clouds are there, the Court should be very slow to interfere in the election process. The Court should not exercise its power under Article 226/227 of the Constitution of India for the benefit of those persons who are, prima facie, found to be dishonest, corrupt or to have misused their power and position. It is, however, required to be clarified here that simply because this Court does not want to interfere in the election process at this stage, it does not mean that the Election Officer is free to deal with all such election disputes at his sweet whims and caprice. It is expected from him that he should act independently, without being influenced by the party in power and without making any favour to any one. The free and fair election is the foundation of the democracy, and if the decision of the Election Officer is influenced by any of such grounds and ultimately, it comes to be true, the people would lose their faith in the democratic system itself. The decision taken by the Election Officer, while dealing with any issue raised before him pertaining to election, should be in accordance with statutory provisions and well-established principles of law and equity and justice. No extraneous consideration should play its role while deciding such issue. The Courts' reluctance to interfere in the election process would be justified only when such decisions are taken by the Election Officers at the grass-root level, solely on the basis of

merits of the case.

25. This Court had an occasion to deal with the election matters earlier, wherein many of the decisions, cited hereinabove, were considered, and this Court has taken the view in Special Civil Application No. 7043 of 2003 decided on 10.6.2003, that since the election process has already been started, any interference which is sought to be done by this Court, at this stage, would unnecessarily delay the election process which is not desirable on any count. Whether the petitioner No.1's Nomination Form is improperly rejected or whether the petitioner No.1's case would fall within the scope of Section 145F of 145J of the Act, can certainly be looked into by the Tribunal in an election petition that may be filed by the petitioner No.1 who may be aggrieved party after the declaration of the result of the petition. This Court has further held that the Courts have consistently deprecated the practice of entertaining petitions which would adversely affect the election process or, to put it in the words used by the Hon'ble Supreme Court in the case of Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha And Another vs. State of Maharashtra and Others (Supra), that "when the election process has been set in motion, the High Court should not stay the continuation of the election process even though there may be some alleged illegality or breach of rules while preparing the electoral roll." Such an attempt would certainly amount to retarding, interrupting, protracting or stalling of the election proceedings and this Court restrains from showing any indulgence in a petition outwardly innocuous but essentially a subterfuge or pretext for achieving an ulterior or hidden end, as observed by the Hon'ble Supreme Court in the case of Election Commission of India vs. Ashok Kumar (Supra).

26. One more grievance raised by Mr. Mangukia is that the election petition takes its own time and some times petitions are not disposed of till the term of the elected candidate is over and precisely for this reason, the filing of election petition cannot be considered as an alternative efficacious remedy, especially when gross injustice is being done to the person, by abuse of the process of law or mala fide, exercise of powers and hence in such case the Court should not remain merely a spectator or onlooker and should not direct the petitioner to wait till the election is over and raise all these disputes by way of an election petition. This would not, however, justify the Court's action to assume jurisdiction and to exercise its power under Article

226/227 of the Constitution, by interfering with the election process. In a given case, the Court may exercise its power, but it is only under extraordinary and exceptional circumstances and an exception can never be a rule. The petitioner may be right in contending that though he has not acquired any disqualification, his nomination form has been improperly rejected. This fact is, however, not enough by itself for invocation of the discretionary powers of the Court. Discretion may be tilted in favour of a person who claims to have equity on his side, over and above the legal support. Because of equity, fair play or public interest at large being at stake, the Court may exercise its writ jurisdiction and may not allow the matter to be proceeded with under the normal rule of law or to be dealt with by statutory authorities or functionaries. Looking to the facts of the present case, the Court, however, prefers to put certain self-imposed restrictions on itself, and exercises its powers wherever it is absolutely necessary. This Court, therefore, holds, that let the election process be over and the election be completed, and, thereafter, if there is any grievance as raised or ventilated by the petitioners in the present petition the same may be raised in an election petition before the Tribunal and the same shall be disposed of by the Tribunal as expeditiously as possible and the Tribunal shall see to it that the right-person should not be denied his legitimate right and the wrong-person should not be allowed to enjoy the benefits of the election.

27. With these observations, the present petition fails. Notice is discharged with no order as to costs.

rmr. [K.A. Puj, J.]